

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

Richard Keith Poe,

Plaintiff,

v.

Director Bryan Sterling, *et al.*,

Defendants.

Civil Action No. 9:19-cv-471-RMG

ORDER AND OPINION

Before the Court is the Report and Recommendation (“R & R”) of the Magistrate Judge (Dkt. No. 14) recommending the Court dismiss Plaintiff’s Complaint. For the reasons set forth below, the Court adopts the R & R and the Complaint is dismissed without prejudice.

I. Background

On February 19, 2019, Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983. (Dkt. No. 1.) On April 18, 2019, the Magistrate Judge issued a Proper Form Order, instructing Plaintiff to take certain actions to bring his Complaint into proper form within twenty-one (21) days. (Dkt. No. 9.) The Order warned the Plaintiff that the case may be dismissed under Rule 41 if he failed to bring his Complaint into proper form. (*Id.*) However, the Proper Form Order was returned to the Court as undeliverable to Plaintiff’s address at the Evans Correctional Institution. (Dkt. No. 12.) According to the SCDC inmate locator, Plaintiff is no longer in custody. The Magistrate Judge filed a R & R recommending the Court dismiss the case. (Dkt. No. 14.) Plaintiff has not filed objections to the R & R, or contacted the Court in any way since filing his Complaint.

II. Legal Standard

The Magistrate Judge makes only a recommendation to this Court that has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Mathews v.*

Weber, 423 U.S. 261, 270–71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court must make a *de novo* determination of those portions of the R & R to which Plaintiff specifically objects. Fed. R. Civ. P. 72(b)(2). Where Plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted). Plaintiff did not file objections, and the R & R is reviewed for clear error.

III. Discussion

Plaintiff has not responded to the R & R or otherwise contacted the Court since the Complaint was filed. Plaintiff’s failure to respond to the Proper Form Order, which instructed him that the case may be dismissed and his failure to otherwise contact the Court or update his address indicates an intent not to prosecute this case. *See* Fed. R. Civ. P. 41(b) (district courts may dismiss an action if a plaintiff fails to prosecute or to comply with an order of the court); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (dismissal appropriate when accompanied by a warning). Therefore, the Complaint is subject to dismissal.

IV. Conclusion

For the foregoing reasons, the Court **ADOPTS** the R & R of the Magistrate Judge (Dkt. No. 14), and the Complaint is **DISMISSED WITHOUT PREJUDICE**.

AND IT IS SO ORDERED.

/s/ Richard M. Gergel
United States District Court Judge

May 30, 2019
Charleston, South Carolina